



## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-9075; NRC-2012-0277]

Updated Record of Decision for Powertech (USA) Inc.;

Dewey-Burdock In Situ Uranium Recovery Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Record of Decision; update.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) staff has issued an updated Record of Decision (ROD) related to the license for Powertech (USA) Inc. (Powertech), Dewey-Burdock in situ uranium recovery (ISR) facility in Custer and Fall River Counties, South Dakota. Powertech's request for a source and byproduct materials license to construct and operate the Dewey-Burdock ISR facility was contested through the NRC's adjudicatory process. On October 8, 2020, the Commission denied a petition for review of the Atomic Safety and Licensing Board Panel's (ASLBP) Final Initial Decision issued on December 12, 2019, and two interlocutory orders, thus terminating the adjudicatory proceeding. The ROD has been updated to account for the ASLBP's decision and the Commission's ruling.

**DATES:** The ROD was updated on December 3, 2020.

**ADDRESSES:** Please refer to Docket ID **NRC-2012-0277** when contacting the NRC about the availability of information regarding this document. You may access publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2012-0277**. Address questions about Docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the

**FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System**

**(ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." The updated ROD can be found by searching for ADAMS Accession No. ML20321A051. For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

- **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Diana Diaz-Toro, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC, 20555-0001; telephone: 301-415-0930; e-mail: [Diana.Diaz-Toro@nrc.gov](mailto:Diana.Diaz-Toro@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Discussion**

The NRC staff issued a license to Powertech for the construction and operation of its Dewey-Burdock ISR facility in Custer and Fall River Counties, in South Dakota in April 2014. Along with the issuance of the license, the NRC staff published a ROD in April 2014 that supported its decision to approve Powertech's license application for the Dewey-Burdock ISR facility.

During the NRC staff's licensing review, the NRC's ASLBP, an independent, trial-level adjudicatory body, granted a hearing request from the Oglala Sioux Tribe and Consolidated Intervenorors (consisting of a group of individuals and organizations). The ASLBP held an evidentiary hearing in Rapid City, South Dakota, from August 19-21, 2014, on seven admitted contentions. On April 30, 2015, the ASLBP issued a Partial Initial Decision (LBP-15-16) resolving all but two of the admitted contentions in favor of the NRC staff: Contentions 1A and 1B, regarding historic and cultural resources, were resolved in favor of the Oglala Sioux Tribe and Consolidated

Intervenors. Subsequently, on October 19, 2017, the ASLBP granted the NRC staff's motion for summary disposition of Contention 1B and determined that the NRC staff's efforts satisfied the National Historic Preservation Act (NHPA) requirement that the NRC staff consult with the Oglala Sioux Tribe. On April 29, 2019, the ASLBP granted the NRC staff's motion to set a schedule for an evidentiary hearing. The hearing was held on August 28 and 29, 2019, in Rapid City, South Dakota. On December 12, 2019, the ASLBP issued the Final Initial Decision (LBP-19-10) finding that the staff satisfied its National Environmental Policy Act (NEPA) obligation to take a reasonable hard look at potential impacts to cultural resources. The ASLBP also found that, consistent with the Council on Environmental Quality regulations at section 1502.22 of the title 40 of the *Code of Federal Regulations*, the information necessary to complete the NEPA review is effectively unavailable and that no further supplemental environmental impact statement is necessary in this case. The ASLBP also included a new condition to Powertech's license. It provides that, prior to appointing a Tribal Monitor pursuant to Stipulation 13(c) of the NHPA Programmatic Agreement, Powertech shall notify the NRC of the identity of the Monitor, and the NRC will in turn distribute that information to the signatories and consulting Tribes to the Programmatic Agreement for a 30-day review and comment period. On October 8, 2020, the Commission denied a petition for review (CLI-20-09) of the ASLBP's final initial decision in LBP-19-10 and two interlocutory ASLBP orders, which terminated the adjudicatory proceeding. The updated ROD accounts for the ASLBP's decisions and the Commission's ruling.

## **II. Availability of Documents**

The documents identified in the following table are available to interested persons as indicated.

<b>Document Description</b>	<b>ADAMS Accession No.</b>
Powertech Dewey-Burdock Application, February 28, 2009	ML091200014 (package)
Generic Environmental Impact Statement for In Situ Leach Uranium Milling Facilities, May 2009	ML091530075 (package)
Resubmission of Application, August 10, 2009	ML092870160 (package)

Response to Request for Additional Information, August 12, 2010	ML102380530 (package)
Revised Response to Request for Additional Information, June 28, 2011	ML112071064 (package)
Ground Water Model, February 27, 2012	ML120620195 (package)
Clarification of Oxidation-Reduction Potential Measurement, April 11, 2012	ML121030013
Clarification of Regional Meteorological Data, June 13, 2012	ML12173A038
Clarification of Response to Request for Additional Information, June 27, 2012	ML12179A534
Supplemental Sampling Plan and Responses to Comments Regarding Draft License, October 19, 2012	ML12305A056
Comments on Draft Supplemental Environment Impact Statement, January 8, 2013	ML13022A386
Supplemental Environmental Impact Statement for the Dewey-Burdock ISR Facility in Fall River and Custer Counties, South Dakota (NUREG-1910, Supplement 4, Volumes 1 and 2), January 31, 2014	ML14024A477 ML14024A478
NHPA Programmatic Agreement for Protection of Cultural Resources, Executed April 7, 2014	ML14066A344 (package)
NRC Safety Evaluation Report, April 8, 2014	ML14043A347 (package)
Source Materials License for Dewey-Burdock, April 8, 2014	ML14043A392
NRC Record of Decision, April 8, 2014	ML14066A466
NRC Updated Record of Decision, December 3, 2020	ML20321A051

Dated: December 8, 2020.

For the Nuclear Regulatory Commission.

Jessie M. Quintero, Chief,  
Environmental Review Materials Branch,  
Division of Rulemaking, Environmental  
and Financial Support,  
Office of Nuclear Material Safety,  
and Safeguards.